

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MELISSA KELLY,

Plaintiff,

- against -

WP COMPANY LLC

Defendant.

Docket No. 17-cv-6297

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Melissa Kelly (“Kelly” or “Plaintiff”) by and through her undersigned counsel, as and for her Complaint against Defendant WP Company LLC, (“WP” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a copyrighted photograph of Annelise Friesen owned and registered by Kelly, a professional photographer. Accordingly, Kelly seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or transacting doing business in New York and is registered to do business in the State of New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Kelly is a professional photographer in the business of licensing her photographs for a fee having a usual place of business at 557 South Topeka, Wichita, Kansas 67202.

6. Upon information and belief, WP is a foreign limited liability company duly organized and existing under the laws of the State of Delaware, with a place of business at 20 West 22nd Street, New York, New York 10010. Upon information and belief, WP is registered with the New York Department of State, Division of Corporations to do business in the State of New York. At all times material hereto, WP has owned and operated a website at the URL: www.WashingtonPost.com (the “Website”) and the newspaper The Washington Post (the “Newspaper”).

STATEMENT OF FACTS

A. Background and Plaintiff’s Ownership of the Photograph

7. Kelly photographed Annelise Friesen (the “Photograph”). A true and correct copy of the Photograph is attached hereto as Exhibit A.

8. Kelly is the author of the Photograph and has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyright thereto.

9. The Photograph was registered with United States Copyright Office and was given Copyright Registration Number VA 2-062-588.

B. Defendant’s Infringing Activities

10. On August 6, 2017, WP ran an article on the Website entitled *The strange pain that can overcome kids, especially high-achieving teenage girls*. See https://www.washingtonpost.com/national/health-science/the-strange-pain-that-can-overcome-kids-especially-high-achieving-teenage-girls/2017/08/04/2dce9650-659c-11e7-8eb5-cbccc2e7bfbf_story.html?tid=ss_fb&utm_term=.2eec2ed8e8ca. The article prominently featured the Photograph. A screen shot of the article with the Photograph is attached hereto as Exhibit B.

11. On August 7, 2017, WP ran an article in the Newspaper entitled *For teen girls, unexplained pain*. The article ran on the front page of the Health & Science Section of the Newspaper. The article prominently featured the Photograph. A true and correct copy of the article with the Photograph is attached hereto as Exhibit C.

12. WP did not license the Photograph from Plaintiff for its articles, nor did WP have Plaintiff's permission or consent to publish the Photograph on its Website or Newspaper.

CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST WP)
(17 U.S.C. §§ 106, 501)

13. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-12 above.

14. WP infringed Plaintiff's copyright in the Photograph by reproducing and publicly displaying the Photograph on the Website and Newspaper. WP is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photograph.

15. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

16. Upon information and belief, the foregoing acts of infringement by WP have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

17. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

18. Alternatively, Plaintiff is entitled to statutory damages up to \$150,000 per work infringed for Defendant's willful infringement of the Photograph, pursuant to 17 U.S.C. § 504(c).

19. Plaintiff further is entitled to her attorney's fees and full costs pursuant to 17 U.S.C. § 505.

20. Defendant's conduct, described above, is causing, and unless enjoined and restrained by this Court, will continue to cause Plaintiff irreparable injury that cannot be fully compensated by or measured in money damages. Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant WP be adjudged to have infringed upon Plaintiff's copyrights in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. Plaintiff be awarded either: a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph; or b) alternatively, statutory damages of up to \$150,000 per copyrighted work infringed pursuant to 17 U.S.C. § 504;
3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;

4. That Plaintiff be awarded her costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 505;
5. That Plaintiff be awarded pre-judgment interest; and
6. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
August 19, 2017

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